

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER:	1901.02
COMPLAINT INVESTIGATOR:	Sandra Scudder
DATE OF COMPLAINT:	March 25, 2002
DATE OF REPORT:	May 3, 2002
REQUEST FOR RECONSIDERATION:	No
DATE OF CLOSURE:	May 29, 2002

**COMPLAINT ISSUES:**

Whether the Delphi Community School Corporation and the Logansport Area Joint Special Services violated:

-511 IAC 7-30-3(x) by failing to implement the orders of the independent hearing officer as written, specifically,

- a. failing to develop a behavioral intervention plan (BIP) that identified positive behavioral strategies;
- b. failing to design a "summer extension program" for the summer of 2002; and
- c. failing to ensure the student is in the general education classroom for 80% of the student's instructional day.

-511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP), specifically:

- a. requiring the student to return home because the special education class was on a field trip and the student's instructional assistant had not yet arrived at school; and
- b. failing to implement the daily behavior charts as required by the student's behavioral intervention plan.

This report was originally due on April 24, 2002. Due to the unanticipated absence of the Complaint Investigator, the due date was extended to May 3, 2002.

**FINDINGS OF FACT:**

1. The student (Student) is 10 years old, is in the 3<sup>rd</sup> grade, and is eligible for special education and related services as a student with a mental disability and a communication disorder.
2. The Complainant asserts that the school (School) is not complying with three of the four orders issued by the hearing officer as a result of the due process hearing conducted in October 2001. The Hearing officer's written decision included the following specific orders:

"1. The school is ordered to maintain the goals and objectives set forth in the IEP that were formulated in April and May, 2002...

c. The Student is to receive educational services 2.5 hours per day in the special education classroom and be in general education 80% of the school day. Therapy sessions will take place during the student's time in the special education classroom.

2. The school is ordered to convene a case conference in order to design an appropriate summer extension program for the student for the coming summer.

3. The school is ordered to conduct a functional behavioral assessment and use the assessment to develop, through a case conference committee, a behavioral intervention plan for the student's IEP. The resulting behavioral intervention plan should comply with 511 IAC 7-17-8 in identifying positive behavioral strategies and should maximize consistency of implementation across people and settings in which the student is involved."
3. The School received the hearing officer's written decision on October 25, 2001. Thirty days from that date elapsed on November 24, 2001. The School did not appeal the hearing officer's decision. The School convened a CCC meeting on December 3, 2001.
4. A functional behavioral assessment was completed on December 3, 2001, by the special education teacher and the director of special education. A CCC was also convened on December 3, 2001. The Complainant asserts that the BIP was not developed to include positive behavioral strategies to address the Student's behavior. The Complainant states that Section D of the December BIP, *REDIRECTION OF INAPPROPRIATE BEHAVIOR*, was not agreed upon at the CCC meeting on December 3, 2001, at which time a BIP was developed and included in the CCC Report/IEP. The Complainant asserts that the BIP developed at this CCC meeting does not include positive behavioral strategies. The BIP identifies two target behaviors that are desired of the Student: interacting appropriately with peers at recess and following directions silently. The BIP includes three "reinforcers" to be utilized when the Student engages in the target behavior and the intervals at which the reinforcers will be utilized. In addition to the positive reinforcers, the BIP includes redirection options, ranging from a verbal warning to contacting the parent, that staff may utilize when the Student exhibits inappropriate behaviors. The BIP is included as part of the IEP developed by the CCC on December 3, 2001. Although the Complainant attended the CCC, she did not provide consent for the implementation of the IEP until March 23, 2002. At that time the Complainant signed the IEP indicating her agreement with the services recommended with some exception and consented to the implementation of the IEP.
5. The Complainant asserts that the CCC has not convened to develop a "summer extension program" for the summer of 2002. The IEP dated December 3, 2001, states that the Student can benefit from attending a program at the local elementary school that begins two weeks prior to the 2002-2003 school year. The Student would attend four hours per day, and the program would address reading and math needs. The IEP also documents that extended school year services would be "fully developed at the annual case review in the Spring 2002." As of April 16, 2002, the CCC had not yet convened to conduct the annual case review.
6. The December 3, 2001, IEP states that the Student will "receive general education instruction for most of the instructional day, with special education instruction or related services provided in a resource room for part of the day." The IEP also states that the Student will receive: 225 minutes per week in "inclusion math," 300 minutes per week in other "inclusion" classes such as health, science, and social studies, 750 minutes per week in a cross-categorical special education classroom, 60 minutes per week of speech therapy, and 30 minutes per week of adapted physical education. The Student will also participate in general education art, music, library, and physical education for 225 minutes per week. According to the IEP, the Student will spend 83% of his instructional time receiving special education services. The initiation date for special education and related services is December 4, 2001.
7. The director reports that this percentage is misleading because it includes the time the Student spends in both special and general education settings, as well as related services. According to the director, the Student spends 2.5 hours per day in the special education classroom; speech therapy

and adapted physical education are provided during that time. The director also reports that the Student spends the remaining hours in the instructional day in a general education setting, including lunch and recess.

8. The School's instructional day is from 8:15 a.m. to 3:00 p.m., for a total of 6.75 hours per day. The Student gets 1.25 hours each day for lunch and recesses and 5.5 hours of instructional time. 80% of the daily instructional time is 4.4 hours. Given the Student's 2.5 hours each day in a special education classroom, the Student participates three hours each day in the general education classroom, as well as 1.25 hours with general education peers for lunch and recess.
9. The Student receives private occupational therapy services outside the school on Thursday mornings. As a result, the Student does not arrive at school until approximately 10:00 a.m. On those mornings, the Student's instructional assistant does not arrive until approximately 9:30 a.m. On March 7, 2002, the Student's occupational therapy appointment was cancelled at the last minute, and the Student arrived at School prior to 10:00 a.m. The instructional assistant had not arrived yet, and the Student's teacher was accompanying the class on a field trip. The Complainant had previously advised the teacher that the Student would not participate in the field trip. Because neither the Student's teacher or instructional assistant were present to assist the Student, the decision was made that the Student should go home and return to school at 10:00 a.m. There are differing reports regarding whether this course of action was suggested by the School or the Student's home health aide. The Student's IEP does not indicate that he will have a shortened instructional day on Thursdays.
10. The Complainant asserts that the daily behavioral charts have not been implemented as required by the IEP. The BIP included with the December 3, 2001, IEP states that documentation of behavior shall be accomplished through daily behavior charts that shall be reviewed on a weekly basis. There are two sets of daily behavior charts: one for behavior during recess and one for behavior the rest of the day. The charts submitted by the School include daily documentation of the Student's behavior, indicating either that the Student exhibited the appropriate target behaviors or that the Student engaged in inappropriate behaviors.

## CONCLUSIONS:

1. 511 IAC 7-30-3(x) requires the School to implement the hearing officer's orders within 30 calendar days of the date it received the written decision, unless the School appeals the decision to the Board of Special Education Appeals. Finding of Fact #3 indicates that the School did not appeal the decision, and the 30 days elapsed on November 24, 2001. Finding of Fact #2 reflects the hearing officer's order that the School conducted a functional behavioral assessment and convened a CCC to develop a BIP that included positive behavioral strategies. Finding of Fact #4 demonstrates that the School conducted a functional behavioral assessment, convened a CCC, and developed a BIP. The BIP identified both positive reinforcers for when the Student exhibited the target behaviors and negative consequences for when the Student engaged in inappropriate behaviors. Because the CCC did not convene until the 35<sup>th</sup> day after the School received the hearing officer's decision, a violation of 511 IAC 7-30-3(x) is found with respect to timeliness. However, despite the lack of timeliness, the BIP developed by the CCC and to which the Complainant consented, identifies positive reinforcers as required by the hearing officer's orders. Therefore, no violation is found with regard to the content of the BIP.
2. Findings of Fact #2 reflects the hearing officer's order for the School to convene a CCC to design a summer extension program for the student for the summer 2002. Finding of Fact #6 demonstrates

that the School convened a CCC, after the expiration of the 30-day deadline, and discussed extended school year services until a CCC to be convened in Spring 2002. Therefore, a violation of 511 IAC 7-30-3(x) is found with respect to the School's failure to convene the CCC meeting within 30 days of receipt of the hearing officer's decision and failing to "design an appropriate summer extension program for the Student for [Summer 2002]."

3. Finding of Fact #2 reflects the hearing officer's order for the School to provide the Student with 2.5 hours of educational services in a special education classroom, as well as ensure that 80% of the Student's instructional day is spent in general education. Findings of Fact #7, #8, and #9 demonstrate that the Student receives 2.5 hours per day in a special education classroom and the remaining three hours of the instructional day is spent in general education. Because 2.5 hours is more than 20% of the instructional day, it is not possible for the Student to be in general education for 80% of the day. However, when the Student is not in the special education classroom, he is in general education. These services were initiated on December 4, 2001, subsequent to the expiration of the 30-day deadline. Therefore, a violation of 511 IAC 7-30-3(x) is found with respect to the School's failure to implement these services within 30 days of receiving the hearing officer's written decision. However, no violation is found with respect to the structure of the Student's day and the time the Student spends in special and general education classes.

**The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.**

#### **CORRECTIVE ACTION:**

The Delphi Community School Corporation and the Logansport Area Joint Special Services shall:

1. Submit an assurance statement that, in the absence of an appeal to the Board of Special Education Appeals, the School shall implement the hearing officer's orders within 30 calendar days of the date the School receives the hearing officer's written decision. **The assurance statement shall be submitted to the division no later than May 24, 2002.**
2. Reconvene the CCC and design an appropriate summer extension program for the Student for the upcoming summer. **A copy of the CCC Report and agreed-upon IEP shall be submitted to the Division no later than May 24, 2002.**
3. Submit an assurance statement that the School shall take appropriate action to ensure that a Student is not returned home in the absence of the Student's teacher or instructional assistant. **The assurance statement shall be submitted to the Division no later than May 24, 2002.**

DATE REPORT COMPLETED: May 3, 2002

